Mountaineer Mining Management, Inc. *and* United Mine Workers of America. Case 9–CA–35873

January 29, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Union on April 13, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on September 17, 1998, against Mountaineer Mining Management, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On December 28, 1998, the General Counsel filed a Motion for Summary Judgment with the Board. On December 30, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 1, 1998, notified the Respondent that unless an answer were received by December 15, 1998, a Motion for Summary Judgment would be filed. In addition, unsuccessful attempts were made by the Region to contact the Respondent's president by telephone on November 27 and December 1, 1998. Each time a message was left requesting a return call, but no return call was received from the Respondent's president or anyone else claiming to represent the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times until January 26, 1998, when it ceased operations, the Respondent, a corporation, was engaged in the mining of coal at a mine site located in Boone County, West Virginia. During the 12 months prior to January 26, 1998, the Respondent, in conducting is business operations described above, performed services within the State of West Virginia valued in excess of $50,000 for Eastern Associated Coal Company. During the 12 months prior to January 26, 1998, Eastern Associated Coal Company was engaged in the processing of coal at its Copperston, West Virginia facility and sold and shipped from that facility goods valued in excess of $50,000 directly to points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of [Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [Respondent], repair and maintenance work performed at the mine site or at a central shop(s) of [Respondent] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by [Respondent], excluding all coal inspectors, weigh bosses at the mines where men are paid by ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

Since about January 1991, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since that date has been recognized as such by the Respondent. This recognition has been embodied in a collective-bargaining agreement between the Respondent and the Union which was effective from December 16, 1993 to August 1, 1998.

At all material times since about January 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about January 26, 1998, the Respondent has failed to continue in full force and effect all the terms and conditions of the collective-bargaining agreement described above by failing to provide health insurance benefits to unit employees pursuant to article XX of that agreement. These health insurance benefits are mandatory subjects for the purpose of collective bargaining. The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to provide health insurance benefits to unit employees pursuant to article XX of the collective-bargaining agreement, we shall order the Respondent to honor the terms of the 1993–1998 collective-bargaining agreement, and to make whole its unit employees by making all contractually required health insurance payments or contributions, including any additional amounts applicable to such delinquent payments as determined pursuant to *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Mountaineer Mining Management, Inc., Boone County, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with United Mineworkers of America, the exclusive representative of the employees in the appropriate unit set forth below, by failing to provide health insurance benefits to unit employees pursuant to article XX of the 1993–1998 collective-bargaining agreement. The unit is:

> All employees of [Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [Respondent], repair and maintenance work performed at the mine site or at a central shop(s) of [Respondent] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by [Respondent], excluding all coal inspectors, weigh bosses at the mines where men are paid by ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms of the 1993–1998 collective-bargaining agreement by making all contractually required health insurance benefits payments or contributions retroactive to January 26, 1998, and make whole the unit employees for any loss of benefits or expenses ensuing from its failure, since about January 26, 1998, to provide health insurance benefits to unit employees pursuant to article XX of the agreement, as set forth in the remedy section of this Decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[1] to all current employees and former employees employed by the Respondent at any time since about January 26, 1998.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 29, 1999

Sarah M. Fox, Member

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1]If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with United Mineworkers of America, the exclusive representative of the employees in the appropriate unit set forth below, by failing to provide health insurance benefits to unit employees pursuant to article XX of the 1993–1998 collective-bargaining agreement. The unit is:

> All our employees engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by us, repair and maintenance work performed at the mine site or at a our central shop(s) and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by us, excluding all coal inspectors, weigh bosses at the mines where men are paid by ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms of the 1993–1998 collective-bargaining agreement by making all contractually required health insurance benefits payments or contributions retroactive to January 26, 1998, and make whole the unit employees for any loss of benefits or expenses ensuing from our failure, since about January 26, 1998, to provide health insurance benefits to unit employees pursuant to article XX of the agreement, with interest.

MOUNTAINEER MINING MANAGEMENT, INC.